

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DALE BRETCHES,

Plaintiff,

No. C 06-05277 JSW

v.

RICHARD KIRKLAND,

Defendant.

**ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS AND GRANTING  
PLAINTIFF'S MOTION TO FILE  
UNTIMELY COMPLAINT**

Now before the Court is the motion filed by Defendant Kirkland to dismiss the case pursuant to Federal Rule of Civil Procedure 41(b) based on Plaintiff Bretches' failure to comply with this Court's order dated September 16, 2009. In that order, the Court ordered Plaintiff to file a Second Amended Complaint within ten days of September 16, 2009. Plaintiff failed to do so.

Also before the Court is Plaintiff's motion to file an untimely amended complaint and for relief based on excusable neglect. Essentially, Plaintiff's counsel argues that he failed to receive notice of this Court's order dated September 16, 2009 and inadvertently neglected to file the amended complaint timely. Counsel claims that he failed to receive the ECF notification that the order had been issued.

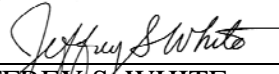
The Court finds these motions appropriate for decision without oral argument. N.D. Civ. L.R. 7-1(b). Accordingly, the Court HEREBY VACATES the hearing date of January 8, 2010. Having carefully reviewed the parties' papers, considered their arguments and the relevant legal authority, the Court hereby DENIES Defendant's motion to dismiss and

1 GRANTS Plaintiff's motion to file an amended complaint. The Court admonishes counsel to  
2 follow all ECF notifications carefully and that failure to comply with this Court's orders may  
3 result in sanctions in the future.

4 Plaintiff may file a Second Amended Complaint by no later than ten days of this order.  
5 Defendants shall have thirty days from the date of the filing of the Second Amended Complaint  
6 in which to respond.

7 **IT IS SO ORDERED.**

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9 Dated: December 22, 2009

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE